IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.482 OF 2003

Varsha S. Sawant and another .. Petitioners
v/s.
The State of Maharashtra and others .. Respondents

Mr.P.M.Havnur for the petitioners.

Mr.Harish Jagtiani for the respondent No.3.

Mr.R.M.Kadam, Advocate General with Mr.R.M.Sawant, Government Pleader for the respondent No.1.

Mr.Bharat Joshi i/by Mr.S.Ganbavle for the respondent No.7-MPSC.

Mr.S.B.Pujari, respondent No.6 in person.

CORAM : R.M. LODHA &
S.J.VAZIFDAR, JJ.

DATED : 5TH JULY, 2006.

P.C.

This writ petition is at the instance of two practicing advocates who had occasion to appear in MPSC examinations held in the year 1999. Based on the newspaper reports, the petitioners allege that they came to know of the malpractices in the examinations conducted by the MPSC. They also came to know that on 20th June, 2002, ACB crime No.33/2002 was registered and respondent No.6 (Mr.S.B.Pujari) was appointed to investigate into the crime. During the course of investigation, Mr.S.B.Pujari, the

petitioners aver, had collected material and was in process of arresting Smt.Sayalee Joshi and others and at that time he was transferred on 31st January, 2003. The petitioners allege that the respondent No.6 was transferred to scuttle the investigation. Accordingly, the present writ petition was filed in the nature of Public Interest Litigation praying therein that the writ of mandamus be issued and the investigation made by respondent No.6 be ordered to be kept in safe custody with the Special Court (Anti Corruption Court) in the Bombay City Civil and Sessions Court and the order transferring respondent No.6 be quashed.

2. That on 25th February, 2003, the transfer order of respondent No.6 was cancelled by the Director General and Inspector General of Police, Maharashtra State keeping in view the observations made by the Supreme Court in SLP (Criminal) No.5611 of 2002 is not in dispute.

3. The respondent No.6 proceeded with the investigation in ACB crime No.33/2002. By the order of this court on 22nd April, 2003, Mr.Anil P. Dhere, the then Joint Commissioner of Police was asked to supervise the investigation in crime No.33/2002 while the respondent No.6 continued to be the Investigating Officer.

4. The respondent No.6 carried out the investigation and admittedly, in addition to the main chargesheet that was filed on 25th September, 2002, nine supplementary chargesheets have been filed by him from time to time and 29 accused persons were arrested. The progress in investigation in ACB crime No.33/2002, was submitted to this court from time to time.

5. An affidavit has been filed by Shri Jeevan D. Virkar, Director General, Anti Corruption Bureau, Maharashtra on 12th May, 2006 before this court indicating therein that the investigation of ACB Crime No.33/2002 investigated by the respondent No.6 has come to an end with the last supplementary chargesheet filed in the trial court on 31st March, 2006.

6. The respondent No.6 has filed his affidavit and has stated that investigation in ACB Crime No.33/2002 is not yet complete and that few more persons involved in the crime are yet to be arrested.

7. It may be noticed here that the respondent No.6 has now been transferred vide general transfer order dated 6th May, 2006.

8. On 8th June, 2006 when the matter came before the Bench, the order was passed that an affidavit of Mr. Anil P. Dhere who

was asked to supervise the investigation is necessary to find out whether the investigation in Crime No.33/2002 is complete or not. Mr. Anil P. Dhere presently posted as Commissioner of Police, SID has, accordingly, filed his affidavit today (5th July, 2006). He has stated in his affidavit that the investigation in Crime No.33/2002 is complete.

9. Mr.S.B.Pujari-respondent No.6 requested that time may be given to him to respond to the affidavit of Mr. Anil P. Dhere as according to him, the affidavit of Mr.Anil P. Dhere needs a response from him lest it must be used by the accused persons to their advantage and may also prejudice the prosecution.

10. We considered the request of Mr.S.B.Pujari. In our view, it is not necessary to grant time to the respondent No.6 to respond to the affidavit of Mr.Anil P. Dhere. The apprehension of Mr.S.B.Pujari that if the affidavit of Mr.Anil P. Dhere remains untraversed and uncontraverted, the accused persons may get benefit of the said affidavit shall be taken care of by the clarification that we shall make in the order.

11. Having considered the entire material before us, we are of the considered view that matter does not require any further

monitoring by this court. With the filing of main chargesheet and nine supplementary chargesheets, the matter has run its course in so far as this court is concerned.

12. If at any stage, the Special Court is of the view that further investigation in ACB Crime No.33/2002 is necessary, the appropriate direction may be issued by the said court. Moreover, even after the conclusion of the investigation, if the present investigating officer collects further evidence against the accused persons or any other person/s, the investigating officer can always submit further report or reports regarding such evidence and person/s before the trial court.

12. The advocate for the Maharashtra Public Service Commission (MPSC) submitted that criminal writ petition has been filed by the Maharashtra Public Service Commission before this court praying therein that ACB Crime No.7/2006 be quashed and that further investigation be continued in ACB Crime No.33/2002. He, accordingly, submitted that this writ petition needs to be kept pending. We are not persuaded by the submission of the counsel for the MPSC. The writ petition filed by the MPSC shall be considered on its own merits uninfluenced by the order passed in the present writ petition.

13. We may observe that the different perception of

investigation amongst Mr.Anil P. Dhere who was asked by this court to supervise the investigation and Mr.S.B.Pujari (Respondent No.6), Investigating Officer resulted in giving unnecessary tool in the hands of the accused persons in making reports against the investigating officer. Had Mr.Anil P. Dhere and Mr.S.B. Pujari worked in tandem, the investigation could have been concluded long back.

14. Be that as it may, the writ petition has been taken to the logical conclusion by filing of the chargesheet and nine supplementary chargesheets against 29 accused persons and no further monitoring is necessary by this court.

15. We clarify that the affidavit of Mr.Anil P. Dhere is for the purposes of this PIL and shall not be used in any proceeding for any purpose whatsoever. We also record the statement of the Advocate General that the affidavit of Mr.Anil P. Dhere does not contain any allegations against Mr.S.B.Pujari.

16. The respondent No.6- Mr.S.B.Pujari put in more than three years in investigating ACB Crime No.33/2002 and we expect the State Government to be objective and ensure that he is not unnecessarily harassed in respect of the investigation conducted by him in ACB Crime No.33/2002.

Writ petition is disposed of accordingly.

(R.M.LODHA, J.)

(S.J.VAZIFDAR, J.)